Postal Regulatory Commission
Submitted 2/13/2015 11:31:56 AM
Filing ID: 91470
Accepted 2/13/2015

BEFORE THE
POSTAL REGULATORY COMMISSION
WASHINGTON, D.C. 20268-0001

Annual Compliance Report, FY 2014	**Docket No. ACR 2014**

REPLY COMMENTS OF AMERICAN POSTAL WORKERS UNION, AFL-CIO (February 13, 2015)

The American Postal Workers Union, AFL-CIO respectfully submits this reply to the comments filed by Pitney Bowes Inc. (Pitney Bowes), urging greater discounts for metered letters and First Class presorted letters/cards. Pitney Bowes seeks to avoid the workshare provisions of 39 U.S.C. § 3622(e) by asking the Commission to treat metered and presort First Class letter mail as a different classification from single-piece First Class letter mail. This rehashes the argument rejected in *U.S. Postal Service v. Postal Regulatory Com'n*, 717 F.3d 209, 210 (D.C. Cir. 2013).

Pitney Bowes complains that the cost savings created by presort and metered mail is not fully captured by existing workshare discounts. It argues that presort and metered mail are somehow subsidizing single-piece First Class mail, because the former is less costly to process.

The statute gives Pitney Bowes a remedy. It may prove that costs avoided by presort letters/cards are greater than those measured by the Postal Service and request some adjustment to rates; but an increased workshare discount must come through the Commission's § 3622(e) review. However, that is not what Pitney Bowes is requesting. Pitney Bowes asks the Commission to circumvent the statutory process entirely, simply

by declaring metered and presort First Class letters/cards a different product than single-piece First Class letters/cards.

That approach would defy Congress. In legislating the mandatory workshare review of § 3622(e), Congress made it clear that discounts to reward technological efficiencies must be strictly confined to proven workshare savings. This mandate cannot be frustrated just by labeling metered mail a different "product." That is the argument the D.C. Circuit rejected in *U.S. Postal Service v. Postal Regulatory Com'n*, 717 F.3d 209, 210 (D.C. Cir. 2013). In that case, the Postal Service sought to give greater discounts to bulk mailers than § 3622(e) allowed, by labeling bulk First Class mail a different "product" than single-piece mail. The Court rejected this argument summarily:

> The Postal Service is unhappy because it believes that it needs to offer bulk mailers large discounts so that bulk mailers will continue to use the U.S. Postal Service rather than, say, email. The Postal Service's primary legal argument is that the statutory limits on the amount of a workshare discount do not apply here because presorted First–Class Mail is not the same "product" as single-piece First–Class Mail. But the statutory language governing workshare discounts does not refer to products. We think the correct statutory analysis here is extremely simple and supports the Commission: The discount that the Postal Service offers for presorting is a "rate discount [ ] provided to mailers for ... presorting." 39 U.S.C. § 3622(e)(1). Therefore, it is clear that, as the Commission concluded, the amount of the discount that the Postal Service may offer for presorting is subject to the statute's workshare discount limit, and the discount may not exceed the cost that the Postal Service avoids as a result of the presorting.

717 F.3d at 210.

This "clear" Congressional mandate prevents the Commission from giving Pitney Bowes what it asks. Otherwise, § 3622(e) would be a dead letter. If Pitney Bowes is

right, any mailer who wants a more generous discount than § 3622(e) allows could circumvent the statute, just by asking for a "reclassification on grounds of efficiency" rather than a "workshare discount." This is what the D.C. Circuit rejected in 2013, and the PRC has no authority to accept it now.

The PAEA prevents discounts based purely on the Postal Service's desire to cater to commercial mailers. If the economic interest in promoting business patronage were enough to justify differential discounts, there would be no point to the § 3622(e) mandate. The Postal Service could justify greater discounts just by declaring that it wishes to give one category of First Class mailers more of a discount than others. As we explained in our Initial comments, this would make § 3622(e), as well as the anti-discrimination provisions of §§ 403(c) and 404(c), meaningless.

If Pitney Bowes wants to prove that presorted and metered mail are not getting enough workshare credit, it is free to prove it in a § 3622(e) proceeding. Pitney Bowes is also free to take its policy arguments for allowing unrestricted discounts to Congress. But as long as § 3622(e) remains the law, Pitney Bowes may not ask for more of a discount than the law allows.

Dated: February 13, 2015 Respectfully submitted,

/s/ Michael T. Anderson
Michael T. Anderson
Rebeccah Golubock Watson
Murphy Anderson PLLC
1701 K Street NW, Suite 210
Washington, DC 20006
(202) 223-2620
(202) 223-8651 (fax)
manderson@murphypllc.com
rwatson@murphypllc.com

Attorneys for American Postal Workers Union AFL-CIO